IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1834 OF 2005

Rajesh J. Sarvaiya ...Petitioner

Versus

State of Maharashtra & Anr ...Respondents

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Mr. S.V.Marwadi, Advocate for Petitioner

Ms. S.V. Gajare, A.P.P. for State.

Respondent No.2 present in person.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 5TH OCTOBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner and the respondent No.2 Smt. Meena Somaiya i.e. the complainant who is present in person.

2. Rule. By consent, rule made returnable forthwith.

3. The petitioner is facing prosecution in C.C. No. 12/S/2003 which is pending before the learned M.M. 14th Court, Girgaon, Mumbai. The said case is under Section 138 of Negotiable Instruments Act.

4. The petitioner had preferred an application

before the learned Magistrate for summoning and examining the complainant as the witness in the said case. In the said case the complainant had filed an affidavit by way of her examination in chief and the petitioner had prayed that the complainant should step into the witness box and her examination in chief be recorded. The said application has been preferred under Section 145(2) of Negotiable Instruments Act. The said application came to be rejected by the learned Magistrate. Being aggrieved by the said order, this petition has been preferred.

5. The respondent No.2 i.e. original complainant is present in person. She states that she will make herself available before the trial Court for examination in chief as well as cross examination. In this view of the matter, the learned Magistrate to record the oral evidence of the complainant in the form of examination in chief with regard to the facts stated by her in her affidavit.

6. Rule made absolute in the above terms.

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